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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	RM-8577
Amendment of the Commission's)	
Rules to Preempt State and Local)	
Regulation of Tower Siting For)	DOCKET FILE COPY ORIGINAL
Commercial Mobile Services Providers)	

THE NYNEX MOBILE COMMUNICATIONS COMPANY'S
REPLY COMMENTS

The NYNEX Mobile Communications Company ("NMCC") hereby files its Reply to the Comments that were filed in response to the Petition For Rulemaking ("Petition") filed on December 22, 1994, by the Cellular Telecommunications Industry Association ("CTIA").

I. INTRODUCTION AND SUMMARY

Approximately 50 parties, including members of the public, wireless service providers and state and local regulators filed comments in response to CTIA's petition seeking federal pre-emption of state and local tower site zoning regulations. NMCC agrees with those commenters who argue that the Commission has the legal authority to adopt rules preempting state and local zoning regulations which frustrate carriers' efforts to obtain transmission sites necessary to effectuate the build-out of the commercial mobile radio services ("CMRS") infrastructure.¹ A number of state and local regulators who object to the Commission's preemptive authority in connection with zoning regulation argue that Section 2(b) of the Communications Act limits the

¹ See, e.g., comments filed by SBMS, Cox, Frontier Cellular, USCC, CCPR and McCaw.

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Commission's power to regulate tower sitings.² This claim is not legally sound. The law is very clear that the FCC may preempt state and local regulators from enacting elaborate, excessive zoning rules or other requirements that are incompatible with the FCC's congressional mandate, pursuant to Sections 1 and 332 of the Act, to foster the development and implementation of wireless services.

The record in this proceeding also demonstrates that the public interest requires that the Commission exercise its preemptive authority. The commenters have provided substantial evidence of numerous instances in which restrictive local regulations have cost CMRS providers millions of dollars in additional and otherwise unnecessary expense and which have caused substantial delays in the provision of service.³

NMCC agrees with those commenters who argue that the construction of towers raises legitimate issues that should be considered by an appropriate reviewing body.⁴ For this reason, we support the recommendation that the Commission conduct a rulemaking proceeding proposing to "develop consensus national standards to guide the location of CMRS towers and associated zoning decisions."⁵ During the course of the rulemaking, the Commission should determine reasonable and uniform federal guidelines to be used as appropriate tower site selection criteria. In addition, the Commission should establish a reasonable timeframe for resolving its rulemaking proceeding and should require local governments to expedite their consideration of zoning applications that meet the federal guidelines. The Commission's goal should be

² See, e.g., comments filed by the Office of the Attorneys General for the Commonwealth of Massachusetts and the State of Connecticut, Natural Resource Defense Council and the County of Prince William.

³ See, e.g., comments filed by Palmer, SBMS, Cox, Frontier Cellular, USCC, CCPR, Nextel, McCaw and Mtel.

⁴ Id. See also, comments filed by GTE Mobile.

⁵ GTE at ii. See also, comments filed by SBMS and Paging Network.

to develop minimum national guidelines that accommodate state and local concerns without compromising federal goals.

II. **THE RECORD SUPPORTS THE COMMISSION'S LEGAL AUTHORITY TO PREEMPT STATE AND LOCAL ZONING REGULATION AND PROVIDES THE EVIDENTIARY BASIS FOR PREEMPTION**

Most parties recognize that the Commission has the power to preempt state or local regulation which conflicts with federal law and obstructs the accomplishment and execution of the full objectives of Congress.⁶ Moreover, substantial evidence has been presented which demonstrates that the practical effect of local zoning regulations has been to preclude or to substantially delay the achievement of the well-established federal goal to promote the introduction of high quality cellular service at the lowest possible cost.⁷

Some commenters argue that Section 2(b) of the Communications Act somehow limits the Commission's authority as regards zoning regulation.⁸ These parties are wrong as a matter of law. Their arguments fail to recognize the fundamental principal of federalism which clearly establishes that federal jurisdiction must prevail over inconsistent state regulation which, if permitted to continue, would negate federal law or policy. Other commenters, such as the Attorney General of the Commonwealth of Massachusetts, argue that "the exercise of authority over the siting/location of CMRS towers by states and local governments is not in any way inimical to the Congressional goal of an efficient competitive market in wireless services."⁹ The fallacy of this argument is underscored by the substantial evidence in this case which documents the

⁶ See, e.g., comments filed by Encompass, BellSouth, Vanguard, Sprint, SBMS, Palmer, Frontier Cellular, Nextel, USCC, PCIA, Mtel and McCaw.

⁷ Id.

⁸ See, e.g., comments filed by the Office of the Attorneys General for the Commonwealth of Massachusetts and the State of Connecticut, Natural Resource Defense Council and the County of Prince William.

⁹ Comments filed by Office of Attorney General for the Commonwealth of Mass. at 3.

deleterious impact of local regulations on CMRS providers' attempts to offer new wireless service or expand existing services in areas impacted by obstructive local regulations.¹⁰

III. CONCLUSION

The FCC should grant CTIA's petition and initiate a rulemaking proceeding to propose rules pre-empting local zoning regulations which interfere with a federal licensee's efforts to provide wireless service. The rulemaking should propose uniform national zoning guidelines for wireless communication facilities. These guidelines should strive to balance the needs of CMRS providers and local and federal regulators.

Respectfully submitted,

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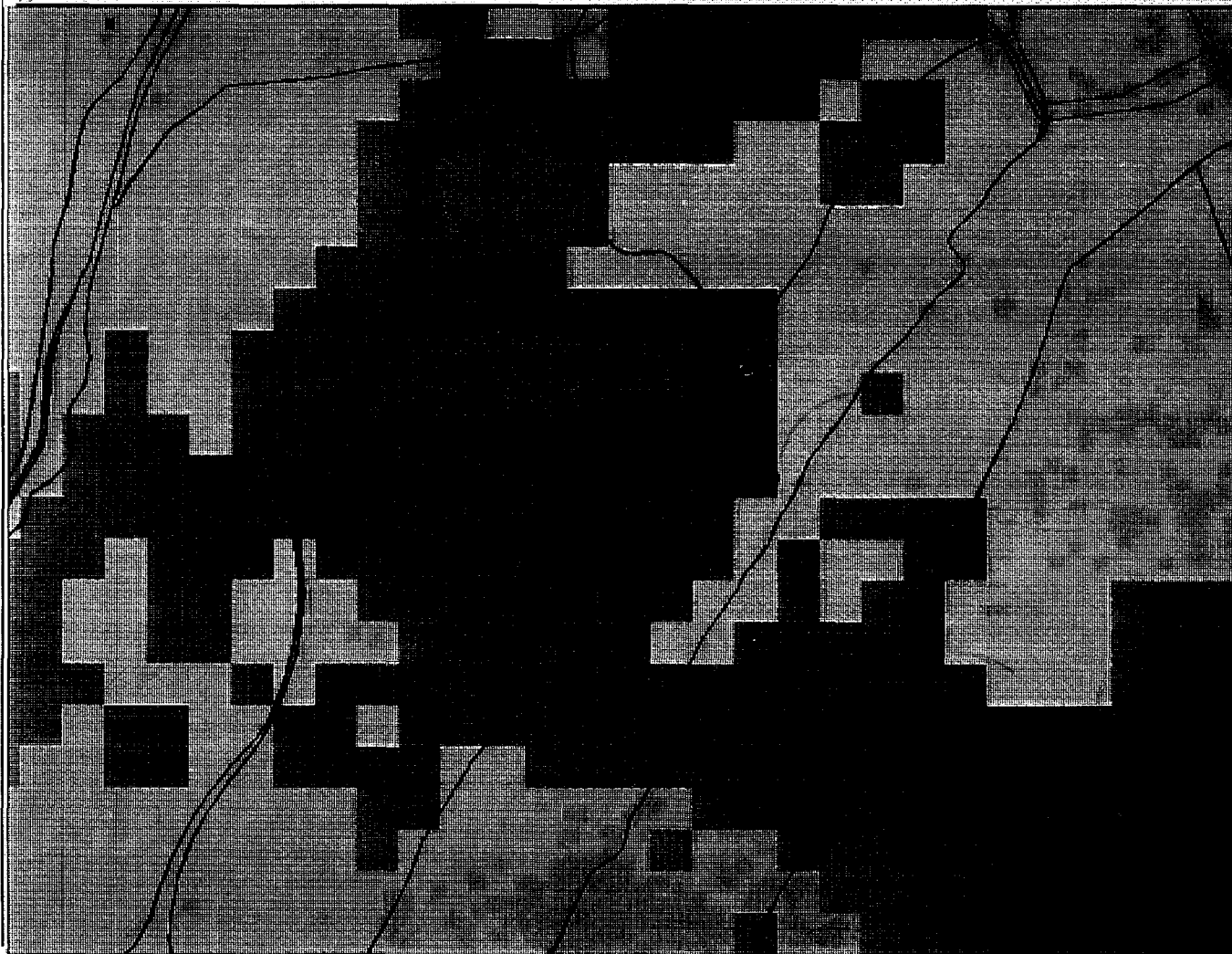
Dated: March 6, 1995

¹⁰ See comments filed by SBMS, Cox, Frontier Cellular, USCC, Nextel, Palmer, Cox and McCaw, APT, Sprint Pacific Telecom and EEA. NMCC has provided evidence to demonstrate how local regulation impedes our attempts to meet customer demands in our service area. Our comments provided specific examples of the effect on service of local zoning regulations adopted in Westchester County, a suburb north of New York City. NYNEX comments at 5-7. Attached to these Reply Comments as Attachment I are coverage maps indicative of the service problems faced by NMCC in Westchester County, where less than optimal signal quality exists as a result of local zoning moratoriums or delayed and protracted zoning hearings.

ATTACHMENT I: Signal Strength Maps

The attached maps measure the signal strength (dBm) in areas served by NYNEX Mobile in Westchester County, New York. Signal strength above -80 dBm represents good signal quality. Where signal strength is below -80 dBm, signal quality does not meet NYNEX Mobile's service standard parameters. The maps are marked to indicate proposed tower siting locations that are subject to moratoriums or delayed local zoning hearings. As indicated by the maps, in some cases, local geography and terrain may require NYNEX Mobile to construct a cell site in a good signal quality area in order to increase the signal strength provided in a less than optimal signal quality area.

WYNER



SIGNAL STRENGTH
(dBm)

View: SYSTEM.2.18.95

Layer: miv_ssi

■ ≤ -80

□ > -80

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Signal Quality System -- Dialogue Window

BRONX RIVER(22NJ) EXISING SERVICE

NYNEX



SIGNAL STRENGTH

(dBm)

View: SYSTEM.2_18_95

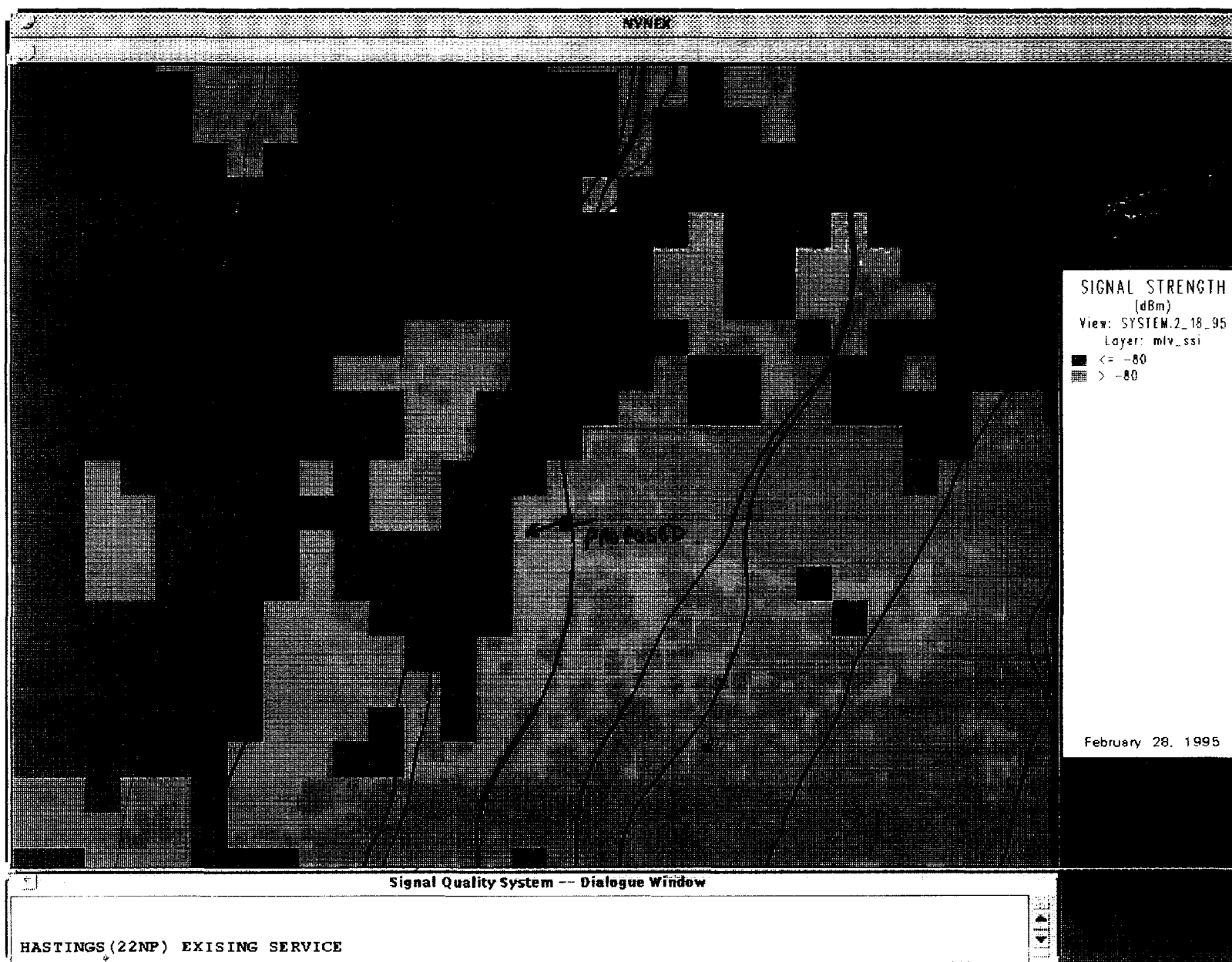
Layer: mlv.ssi

■ -80
▣ -90

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E. HARRISON(22PI) EXISING SERVICE



NYNEX

SIGNAL STRENGTH
(dBm)

View: SYSTEM.2_18_95

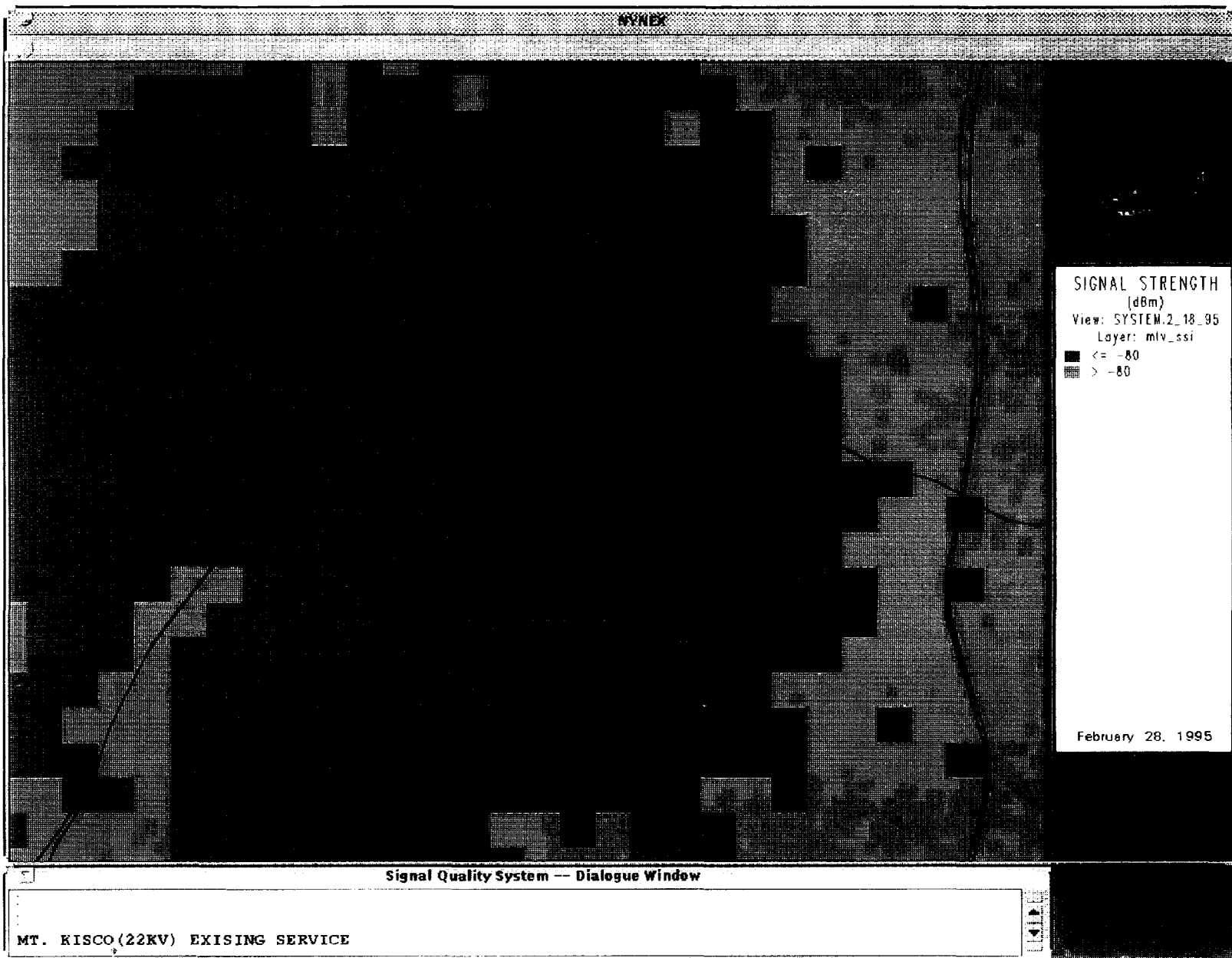
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■ ≤ -80
▨ > -80

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LARCHMONT (22QQ) EXISTING SERVICE



SSWEX



SIGNAL STRENGTH
(dBm)
View: SYSTEM_2_18_95
Layer: miv_ssi
■ ≤ -80
■ > -80

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MT VERNON/PELHAM (22NT) EXISTING SERVICE

NYNEX



SIGNAL STRENGTH

(dBm)

View: SYSTEM.2_18_95

Layer: mlv_ssi

■ ≤ -80

■ > -80

February 28, 1995

Signal Quality System -- Dialogue Window

SPRAIN BROOK (22NV) EXISING SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NYNEX MOBILE COMMUNICATIONS COMPANY'S REPLY COMMENTS, was served by first class United States Mail, postage prepaid, on each of the parties indicated on the attached service list, this 6th day of March, 1995.


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